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CHARLES ELMORE CROPLEY
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IN THE

Supreme Court of the United States

No. 3, Oct. Term, 1929.

Powers Kennedy Contracting Corporation, and Anthony G. Fleck, *Defendant-Petitioners,*

vs.

Concrete Mixing & Conveying Company, *Plaintiff-Respondent.*

No. 4, Oct. Term, 1929.

Concrete Mixing & Conveying Company (A Corporation), *Plaintiff-Petitioner,*

vs.

R. C. Storrie & Company (A Partnership), *Defendant-Respondents.*

RESPONSE OF APPELLEE IN OPPOSITION TO APPELLANT'S MOTION TO ADVANCE.

Charles E. Townsend,
Solicitor for Appellee,
R. C. Storrie & Company.

Press of Byron S. Adams, Washington, D. C.

IN THE

Supreme Court of the United States

No. 10, Oct. Term, 1929.

Powers Kennedy Contracting Corporation, and Anthony G. Fleck, *Defendant-Petitioners*,

vs.

Concrete Mixing & Conveying Company, *Plaintiff-Respondent*.

No. 11, Oct. Term, 1929.

Concrete Mixing & Conveying Company (A Corporation), *Plaintiff-Petitioner*,

vs.

R. C. Storrie & Company (A Partnership), *Defendant-Respondents*.

RESPONSE OF APPELLEE IN OPPOSITION TO APPELLANT'S MOTION TO ADVANCE.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Comes now R. C. Storrie & Company, Appellee, and moves that Appellant's Motion to Advance be denied for the reasons herein given.

The above entitled consolidated cases were argued one year ago (April, 1929), but the Court at its last session (March 17, 1930) ordered the cases restored to the calendar for re-argument.

Counsel for Defendant-Respondent (R. C. Storrie & Co.) having already acted on this order and accordingly arranged his cases in other courts, and likewise all his other business, cannot now be present and re-argue this case before Court adjourns on May 2nd without the greatest personal inconvenience and certain detriment to the business of other clients. The Honorable Court's attention is also called to the fact of counsel's residence, and required traveling from San Francisco, and the extremely limited time remaining—May 2, 1930.

Quite in contrast to Plaintiff-Petitioner's present desire to expedite this proceeding, the Honorable Court's attention is called to the fact that although the case against R. C. Storrie & Company was filed in February, 1924, Plaintiff-Petitioner has not heretofore made any attempt to press it to trial until after the Concrete Mixing & Conveying Company had sued the Great Western Power Company, an alleged infringer in San Francisco. And promptly following the filing of that suit in 1927 said Great Western Power Company proceeded to take depositions in various parts of the United States involving an expense of over twenty thousand dollars ($20,000) and produced evidence believed sufficient to invalidate the patent in suit. Plaintiff-Petitioner (in July, 1927) then moved to dismiss this San Francisco case without going to trial and sought to rush to trial the case of R. C. Storrie & Com-

pany, thereby forcing the said Company at still greater expense to retake all depositions previously taken in the San Francisco proceeding. It is submitted the substance of these depositions constitute the basis on which the trial Court and the Circuit Court of Appeals unanimously found invalidity of the patent in suit.

The foregoing clearly shows a voluntary delay of three (3) years on the part of Plaintiff-Petitioner, in striking contrast with its present Motion, and which, if granted, would save only the few months between now and October (1930) when this case can be properly reargued in its regular order as now set.

Petitioner in its Motion papers has greatly overstated the alleged infringements. For example, in the Southern California Edison Tunnels, the mileage total is approximately twenty-three (23) instead of thirty-five (35) and the amount of concrete used does not constitute over one-tenth (1/10th) of the twenty-three (23) miles.

Counsel herein is alone fully conversant with all the facts respecting the merits and position of Defendant-Respondent (R. C. Storrie & Co.) in this proceeding and cannot in justice now delegate to another its proper presentation to the Honorable Court.

WHEREFORE, it is respectfully prayed the time now set for re-argument by the Honorable Court be permitted to stand, and the Motion to Advance be denied.

Respectfully,

CHARLES E. TOWNSEND,
Solicitor for Appellee,
R. C. STORRIE & COMPANY.